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HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No.458/2005

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant : United India Insurance Co. Ltd., District Raigarh (CG)
Non-applicant 3

Versus

Respondents :
1. Shabbir Khan S/o Peer Khan, aged 23 years, R/o Village Bilaspur, P.S. Sarsiwan, District Raipur (C.G.) (Driver)
Non-applicant - 1
2. Dinesh Chandra S/o Badrika Prasad Chandra, aged 18 years, R/o Village & P.S. Sarsiwan, District Raipur (C.G.)
Non-applicant - 2
3. Anil Pandey S/o Gopal Das Pandey, aged 35 years, R/o 27 Kholi, Bilaspur, District Bilaspur (C.G.).
Non-applicant - 4
4) Munna Jaiswal, S/o Jaylal Jaiswal, aged 27 years, R/o Sarab Bhatti, Bhatgaon, Thana Bilaighad, District Raipur (C.G.)
Non-applicant - 5
5) The National Insurance Co., Bilaspur, District Bilaspur (C.G.)
Non-applicant - 6
6) Shyambai, aged 30 years, Wd/o Udayram Sahu,
7) Ganesh Ram S/o Udayram Sahu, aged 13 years,
8) Govindram S/o Udayram, aged 11 years,

7 & 8 are minors, through Wali mother, Shyam Bai Sahu.
9) Dhansai S/o Ghasiram Sahu, aged 60 years,
10) Parvati Bai W/o Dhansai Sahu, aged 57 years,
11) Dujram, S/o Dhansai Sahu, aged 25 years,

All R/o Village Mohtara, Police Station Sarsiwan, District Raigarh (C.G.)

Claimants

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Shri Sanjay Shyam Agrawal, learned counsel for the appellant.
Shri Anil Gulati, learned counsel for respondents No. 1 & 2.
Shri Dashrath Gupta, learned counsel for respondent No.5

ORAL ORDER
(Passed on 06th September, 2006)

The following oral order of the Court was passed by **S.R. Nayak, C.J.**

We do not find any justification for the Insurance-Company to prefer this appeal. What has been awarded by the M.A.C.T., in our considered opinion, is just and reasonable compensation envisaged under the provisions of the Motor Vehicles Act, 1988. This is a death case. The deceased, on the date of accident and his demise, was working as a mason and he was aged 32 years. He left behind him, his young wife and minor children. They do not have any other source of livelihood.

2. The fact that the deceased died in the accident on account of the actionable negligence on the part of the driver of the motor vehicle involved in the accident and insured by the Insurance-Company, is not disputed before us. In other words, the Insurance Company is liable to pay the compensation. Before we proceed further, at this stage itself, it needs to be noticed that the Insurance-Company has not sought permission under Section 170(b) of the Motor Vehicles Act, 1988 to contest the claim on merit. Be that as it may, the monthly income taken by the M.A.C.T. at Rs.3750/- per month for the purpose of computing the loss of dependency cannot be regarded as excessive or unreasonable. As pointed out supra, on the date of accident, the deceased was working as

mason and, according to the legal representatives of the deceased, he was earning Rs.150/- per day or Rs.4500/- per month. The status of the deceased that he was working as mason is not seriously disputed before us or before the Tribunal. The accident took place on 16.09.2003 at village Sarsiwan. A mason earning between Rs.125/- or 150/- per day having regard to time and place, could not be ruled out. As held and reiterated quite often, in computing loss of dependency and arriving at the income of the deceased in the case of non-salaried persons, an element of guess work necessarily goes into the decision-making. Taking the totality of the circumstances, the Tribunal was, according to us, justified in taking the monthly income of the deceased at Rs.3750/- and having deducted one-third of the same towards personal expenses of the deceased, it calculated the total compensation payable to the legal representatives of the deceased towards loss of dependency.

3. No other point was urged before us to assail the correctness of the impugned award. The appeal is devoid of merit and it is accordingly dismissed.

Sd/- Chief Justice	Sd/- Dilip Raosaheb Deshmukh Judge